SBCivil Writ Petition No.5104/2005

Asstt.Provident Fund Commissioner, Udaipur
Vs.
Bharat Sanchar Nigam Ltd., Udaipur & Anr.

Date of Order :: 28th August, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Prabhat Ojha, for the petitioner.
Mr. Sukumar Pattjoshi]
Mr. Vijay Bishnoi] for the respondents.

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The Assistant Provident Fund Commissioner, Udaipur while exercising powers under Section 7-A(1)(b) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act of 1952") by an order dated 28.10.2004 determined the provident fund in respect of the contractors employees for the period commencing from October, 2002 to June, 2004.

M/s Bharat Sanchar Nigam Limited (hereinafter referred to as "the BSNL") being aggrieved by the order aforesaid preferred an appeal before the Employees Provident Fund Appellate Tribunal, New Delhi, that came to be accepted by judgment dated 23.3.2005, hence extra ordinary jurisdiction of this Court is sought to be invoked by the petitioner to challenge validity, propriety and correctness of the order dated 23.3.2005.

Learned tribunal by judgment impugned set aside the order dated 23.3.2005 by holding that until and unless the employees to whom provident fund is required to be paid are identified, the act of determining dues and recovery from the establishment would not be proper. Accordingly, the matter is remanded to the Assistant Provident Fund Commissioner, Udaipur to hold an inquiry afresh by first identifying the workers concerned. A direction is also given to refund the amount recovered from M/s BSNL in pursuant to the order dated 23.3.2005.

The contentions formulated to challenge the judgment are as follows:-

> (1)no duty could have been casted upon the petitioner to identify workers s the onus to supply names and other details of the employees was on M/s BSNL and its contractors; and
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> (2)no direction could have been given to refund the amount already recovered while remanding matter to make an inquiry afresh.

From the facts averred in para 9 of the writ petition and from perusal of document Anx.2 it reveals that a list containing details of 67 contractors through whom work was got done was submitted by M/s BSNL in pursuant to a notice given by the petitioner to provide names of the contractors and other details

pertaining to the contract. It was responsibility of the petitioner to summon the contractors and make necessary inquiry from them to ascertain and identify the workers for making effective determination of money due as they possess the names and other details of workers engaged by them.

In the instant matter the petitioner in spite of having powers as are vested in a Court under Code of Civil Procedure, 1908 while conducting an inquiry under Section 7-A(1) of the Act of 1952 did not choose to summon and enforce attendance of the contractors. As a matter of fact under the Act of 1952 powers is given to the petitioner to determine money dues from employer and to make actual payment of it by identifying the workers/employees. The Assistant Provident Fund Commissioner in the instant matter failed to make any effort to identify the workers who are the real beneficiary by determination of money due. The tribunal in view of factual and legal position as stated above rightly set aside the order passed by the Assistant Provident Fund Commissioner to make an inquiry afresh to identify the workers.

I do not find any force in the contention of counsel for the petitioner that no direction could have been given to refund the amount already recovered. Once the order determining money due has been set aside, there is no reason to permit the

petitioner to retain the money already recovered in pursuant to the order dated 28.10.2004. No error, therefore, has been committed by learned tribunal while making an order to refund the amount already recovered.

The judgment impugned, in view of whatever stated above, does not suffer from any error which may warrant interference of this Court under Articles 226 and 227 of the Constitution of India. The writ petition, therefore, is dismissed.

However, it is expected from the petitioner to make the inquiry under Section 7-A of the Act of 1952 expeditiously. The respondent BSNL, therefore, is directed to appear before the Assistant Provident Fund Commissioner, Employees Provident Fund Organisation, Udaipur on 11.9.2006 for further proceedings. The BSNL shall also cooperate the petitioner in completing the inquiry as early as possible.

(GOVIND MATHUR),J.

kkm/ps.